

# INDEX.

---

## A

### ACTION.

1. *Personal*.—An action for rent is a personal not a real action.—*Adams v. Blecker*, 403.
2. *Money had and received—Duress*.—A voluntary payment of an illegal demand, the party knowing it to be illegal, without an immediate necessity, unless to redeem or preserve his person or goods, is not the subject of action for money had and received.—*Clafin v. McDonough*, 412.
3. *Attachment*.—Where a bond for the forthcoming of the property attached before a justice is taken by the officer, and the property is not produced in obedience to the judgment and order of court, the plaintiff in the attachment has no cause of action upon the bond, either by motion or suit, until the bond is duly assigned to him. (R. C. 1855, p. 266.)—*McDowell et al. v. Morgan*, 555.

### ACCORD AND SATISFACTION.

See PAYMENT.

### ADMINISTRATION.

1. *Limitations*.—A suit against the administrator, upon the agreement recited in a bond of his intestate, is a sufficient exhibition of the plaintiff's demand to save it from the operation of the statute of limitations of three years, although the plaintiff subsequently amend his petition and sue upon the bond for the penalty.—*Farrar et al. v. Christy's Adm'r*, 44.
2. *Parties*.—The administrator has the legal right and is the proper person to bring any kind of civil action which may be necessary to collect a debt due the decedent.—*Cheeley's Adm'r v. Wells*, 106.

### ATTACHMENT.

1. *Pleading*.—A plea in abatement to an attachment must be filed within the time limited by the practice act for filing pleas.—*Hamilton v. McClelland*, 315.
2. *Pleading*.—Where a suit is brought by attachment upon a demand not due, the defendant, although he may have lost the right to file a plea in abatement of the writ, has the privilege of pleading to the merits at any time before the demand matures. (R. C. 1855, p. 257, § 64.)—*Id.*
3. *Record*.—The record of the proceedings in cases of interpleader upon attachment should be kept distinct from the record of the proceedings in the attachment.—*Brennan v. O'Driscoll*, 372.

ATTACHMENT—*Continued.*

4. *Justices' Courts—Jurisdiction.*—A justice of the peace has jurisdiction to enter judgment on motion upon a forthcoming bond taken in an attachment suit commenced before him, although the penalty exceeds his jurisdiction in a direct suit upon the bond. (R. C. 1855, p. 266, & p. 925-6.)—*McDowell & Co. v. Morgan et al.*, 555.
5. *Attachment—Fraudulent Conveyance.*—In an issue upon a plea in abatement to an attachment, alleging that the defendant had fraudulently conveyed or assigned his effects so as to hinder or delay creditors, the conveyance is fraudulent so as to support the attachment if the defendant made the conveyance with the fraudulent intent, although it may have been valid as to the trustee and the creditor secured.—*Enders et al. v. Richards*, 598.

## B

## BAILMENT.

1. *Stocks.*—Stocks are not like goods or articles of personal property, of variable quality; and the sale of one parcel by a bailee will answer the purpose of crediting the bailor with the proceeds of stock pledged, as well as the sale of the specific shares.—*Berlin v. Eddy*, 426.

## BANKS AND BANKING.

1. *Exchange.*—The banks chartered by the State may charge, in addition to the interest mentioned, a reasonable premium on exchange when the note or obligation is payable out of the county in which it is discounted. (Sess. Acts, 1857, p. 22, § 38.)—*Merchants' Bank of St. Louis v. Sasse et al.*, 350.
2. *Corporations.*—There is no such person in law as the Branch Bank of the State of Missouri.—*Bank of the State of Missouri v. Smith, Robidoux & Beauvais*, 364.
3. *Banks—Payment—Tender.*—The banks incorporated by the law of this State have the right to consider each bank bill as a separate and distinct demand, and to tender in payment thereof five dollars in the silver coin of the United States, struck under the act of Congress of February 21, 1853, and the balance of each note in gold coin. Such tender avoids the penalty of twenty per cent. interest imposed by the law of this State incorporating the banks. (Acts, 1857, p. 17, § 9, & p. 23, § 44.) *Bates, J., dissenting.*—*Boatman's Savings Institution v. Bank of Missouri*, 497.

## BANKING, ILLEGAL.

1. *Corporations.*—The act of 1855 to prevent illegal banking is a revision of the law of 1845. Corporations chartered prior to the act of 1855 are subject to the provisions of the 4th section, prohibiting the passing or receiving of bank notes or other paper currency under the denomination of five dollars. (R. C. 1855, p. 286, § 4 & 9.)—*North Missouri R.R. Co. v. Winkler*, 354.
2. *Corporation—Forfeiture.*—Under the act to prevent illegal banking, a violation thereof may be pleaded in bar of any suit brought by a corporation, and it is not necessary that the franchise should have been forfeited upon direct proceedings for that purpose.—*Id.*
3. *Corporator—Estoppel.*—Under the illegal banking act of 1855, a stockholder sued for his subscription is not estopped to plead the violation of the act by the corporation in bar of the suit. (R. C. 1855, ch. 16, § 4 & 9.)—*Id.*

**BANKING, ILLEGAL—Continued.**

4. *Corporations—Currency.*—The provisions of the act relating to illegal banking (R. C. 1855, p. 286) do not apply to literary, scientific and charitable corporations. The evil the act designed to prevent was the introduction into this State by moneyed corporations, or corporations engaged in business of profit, of the circulation of foreign and worthless bank notes to the injury of the people of the State. (S. C. 29 Mo. 71.)—*Christian University v. Jordan*, 528.

**BANKRUPT.**

1. *Conveyance—Assignee.*—The deed of an assignee, conveying the lands of the bankrupt, must recite the decree in bankruptcy and the order appointing the assignee. The right of the assignee to convey depended upon the act of Congress, and he must convey in the manner prescribed by the act, or the conveyance will be void.—*Gray v. Heslep*, 238.

**BILLS OF EXCHANGE AND NEGOTIABLE NOTES.**

1. *Equities.*—The equities which affect a negotiable note, endorsed or assigned after maturity, must be such as attach to the particular note, and not such as arise out of independent transactions between the parties.—*Unsell v. Stephenson*, 161.
2. *Agent.*—An agent who draws a bill of exchange upon his principal in settlement of a debt due by the principal to the payee, does not thereby make himself liable to the payee as drawer of the bill upon protest for nonpayment. If the bill had been negotiated he might have been bound to an innocent holder.—*McAllister v. Budd et al.*, 417.
3. *Alteration.*—Any material alteration in a bill or note will render such bill or note invalid as against a party not consenting to such alteration, even in the hands of an innocent holder. The adding at the end of a note, "bearing ten per cent. interest from maturity," is a material alteration.—*Ivory v. Michael et al.*, 398.
4. *Alteration.*—The altering of the date of a note so as to make payable in the future, when by the date the time limited had already expired, is a material alteration, and avoids the note as to the parties not assenting thereto.—*Owings v. Arnot et al.*, 406.
5. *Alterations.*—The insertion at the end of a note of the words "bearing ten per cent. interest from maturity" is a material alteration, and avoids the note as to all parties not assenting thereto.—*Presbury v. Michael et al.*, 542.
6. *Protest.*—Generally, demand of payment of a foreign bill of exchange must be made by a notary or some duly authorized officer, or the protest will be invalid; but when authorized by usage, demand may be made in accordance with the custom or law of the place where the bill is payable, by a notary's clerk.—*Miltenberger v. Spaulding*, 421.
7. *Demand.*—Where the acceptors of a bill of exchange were partners, and had failed and closed their place of business, and had no other office or place of business, a demand at the dwelling-house of one of the acceptors will be sufficient.—*Id.*
8. *Demand.*—If, at the maturity of a note, the maker has no known residence or place of business, a demand is unnecessary to bind the endorser.—*McKee v. Boswell*, 567.

BILLS OF EXCHANGE AND NEGOTIABLE NOTES—*Continued.*

9. *Demand.*—It is presumed that the place at which the note is dated is the place of residence of the maker; but if the fact be otherwise, and the maker have a known place of residence elsewhere within the State, demand must there be made.—*Id.*
10. *Agent—Authority.*—If a party, whose name is forged to a note by a person not his agent in any way, ratifies or adopts the act for the purpose of shielding the forger from the consequences of the crime, he does not thereby make himself liable, as principal, for the acts of an agent.—*Ferry v. Taylor*, 323.
11. *Demand.*—If it is agreed between the parties to a note that it shall be payable at a particular place, then a demand at that place will be sufficient; and parol evidence is admissible to prove such agreement.—*McKee v. Boswell*, 567.
12. *Consideration.*—The payee of a promissory note given at the request of the payee and without any consideration, cannot recover against the maker.—*Moore et al. v. Maddock et al.*, 575.

## BOATS AND VESSELS.

1. *Admiralty.*—A sale of a vessel by order of a court of admiralty is conclusive upon all persons, and divests all liens; but a sale of a steamboat under the statutes of the different States, allowing of the suing of the boat by name, divests only the liens created by the laws of that State. A sale of a steamboat by order of the courts of Illinois will not prevent a citizen of Missouri from enforcing against the boat in the hands of the purchaser the liens created by the laws of this State. (*Steamboat Sea Bird v. Beehler*, 12 Mo. 570, affirmed.)—*Phegley et al. v. St. Bt. David Tatum*, 461.
2. *Jurisdiction.*—The Federal courts have exclusive jurisdiction in all admiralty and maritime matters.—*Id.*
3. *Limitations.*—A suit is commenced against a boat by filing the petition and taking out process to seize the boat, and the time limited by the statute is to be computed, not from the date of seizing the boat, but of the issuing the writ.—*McDowell et al. v. St. Bt. David Tatum*, 494.

## BONDS, NOTES ASSIGNABLE, AND CHOSSES IN ACTION.

See CORPORATIONS, MUNICIPAL, 6, 7, 8.

1. *Assignee.*—A plaintiff can only recover on such right as he had when suit was brought. A written assignment of a note, made after suit brought by the assignee, is not a sufficient title to authorize the action by the assignee, but he may show himself to have been the equitable owner and thus sustain his action. (R. C. 1855, p. 1217, § 1.)—*Weinick v. Bender*, 80.
2. *Assignment.*—The assignee of a chose in action, or note not negotiable, takes it subject to all defences the maker may have against it prior to notice of the assignment. (R. C. 1855, p. 322, § 3.) The payment by the maker of a non-negotiable note of the sum due, upon an attachment against the payee, without notice of any assignment, will bar a suit by the assignee.—*Id.*
3. *Assignor.*—A non-negotiable note, endorsed by the payee, for the accommodation of the maker, will, in the hands of a holder for value, bind the assignor.—*Macy v. Kendall*, 164.

## C

## CONFLICT OF LAWS.

See BOATS AND VESSELS, 1,

## CONSTITUTION.

1. *Guardian*.—An act of the General Assembly empowering a guardian to sell the land of his wards, and to apply the proceeds thereof to their benefit under the direction of the court, is not in violation of the constitution of this State.—*Stewart, &c., v. Griffith*, 14.
2. *Register*.—The joint resolution of the General Assembly, approved January, 1863, so far as it forbids payment to the register for the services rendered by him, under the act of March 15, 1861, is retrospective in its operations, and destructive of a vested right and therefore void.—*State, ex rel. v. Auditor*, 287.

## CONTRACT.

See SALES. DAMAGES. BAILMENT.

1. *Damages*.—When there has been a rescission of a contract for the sale of chattels, the purchaser may sue and recover from the seller the value of what he paid on the contract; but when the contract is still subsisting, the measure of damages is the market value of the chattel at the time and place of delivery.—*White, Ex'r, v. Salisbury*, 150.
2. *Former judgment*.—If a servant or agent wrongfully dismissed from service elect to sue for the breach, before the termination of the period for which he was hired, and recovers, such recovery will be a bar to any subsequent action upon the same contract.—*Booge v. Pacific Railroad*, 212.

## CONVEYANCES.

See WILLS.

1. *Deed—Seal*.—At common law, a piece of paper cut and affixed to a wafer on the deed was a sufficient sealing of the instrument. The law does not require that the impression should be apparent.—*Pease v. Lawson*, 35.
2. *Evidence*.—It is no objection to the admission in evidence of an instrument, properly proved, that the plaintiff was the subscribing witness upon whose evidence it was certified by the proper officer, the plaintiff having no interest in the land at the time of making such proof.—*Id.*
3. *Description*.—Where a deed called to commence at a point in the grantor's northern boundary line, and to run on that a given course and distance; *held*, that the true northern line must be taken, although the grantor may have had a survey made on the ground the courses and distances of which survey were set forth in the deed, and the northern line of such survey differed entirely from the true northern line of the tract.—*Manter et al. v. Picot*, 490.
4. *Estoppel—Femme Covert*.—Prior to the act of June 22, 1831, authorizing married women to convey their estates, to make a valid conveyance of the wife's estate it was necessary that the wife should acknowledge the deed in the manner provided by the statute then in force. (*Lindell v. McNair*, 4 Mo. 380; *Reaume v. Chambers*, 22 Mo. 52.)—*McDowell et al. v. Little et al.*, 523.
5. *Estoppel*.—The recitals of a deed estop only parties and privies. The recitals in a deed by which a married woman purports to convey her title to land,

CONVEYANCES—*Continued.*

- do not estop her, nor those claiming under her, from asserting the truth against the recitals.—*Hempstead v. Easton*, 142.
6. *Estoppel*—Mutuality is a necessary ingredient of an estoppel. There can be no estoppel upon one party unless the other is equally estopped.—*Id.*
  7. *Partition—Warranty*.—There is an implied warranty between coparceners as to the property allotted in partition; but, *held*, that in this case there had been no partition, and that the lots had not been held in coparcenary. (*S. C.*, *Farrar v. Christy's Adm'r*, 24 Mo. 453, Pt. 3, affirmed.)—*Farrar et al. v. Christy's Adm'r*, 44.
  8. *Deed—Evidence*.—To make a certified copy of a deed evidence it must appear that the deed was duly recorded in the county in which the land conveyed was situated. (*R. C.*, p. 726, § 17.)—*Gwynn v. Frazier*, 89.
  9. *Bankrupt—Assignee*.—The deed of an assignee, conveying the lands of the bankrupt, must recite the decree of bankruptcy and the order appointing the assignee. The right of the assignee to convey depended upon the act of Congress, and he must convey in the manner prescribed by the act, or the conveyance will be void.—*Gray v. Heslep*, 238.
  10. *Corporations*.—A municipal corporation having power by its charter to dispose of its lands, its deed therefor will be presumed to have been executed in pursuance of the power, and it is unnecessary for the grantor to show any special authority by resolution or ordinance.—*Chouquette et al. v. Barada et al.*, 249.
  11. *Corporation, municipal—Leases—Forfeiture*.—Where the lease, made by a municipal corporation, provided for a forfeiture of the lease on account of non-payment of rent, to be made by order or resolution to be entered on the proceedings of the board of council, and the charter required all resolutions and ordinances to be approved and signed by the mayor before they should take effect, the mere signature to the minutes by the mayor as president of the board is not an approval of the resolution or order forfeiting the lease, and the forfeiture is not well taken.—*Graham v. Carondelet*, 262.

## CORPORATIONS.

See BANKING ILLEGAL, 4.

1. *Agents*.—A corporation acts only by its agents; the acts of the agents, therefore, within the scope of their authority, will bind the corporation. (*Christian University v. Jordan*, 29 Mo. 68, qualified and affirmed.)—*North Missouri R.R. Co. v. Winkler*, 354.
2. *Mortgage*.—Corporations are not prohibited by § 2, ch. 37, R. C. 1855, p. 385, from giving a mortgage or lien upon property they may purchase. The provision of the act applies only to property the corporation may already own.—*McMurray v. St. Louis Oil Manufacturing Co.*, 377.
3. *Judgment confessed*.—A judgment confessed by the president of a corporation without service of process, and without the order or knowledge of the directors or company, and not setting forth the cause of the indebtedness, is void.—*Id.*

## CORPORATION, RAILROAD.

1. *Negligence—Damages*.—There can be no recovery against a railroad for the killing of cattle unless the negligence of the company be in some way

CORPORATION, RAILROAD—*Continued.*

shown. The mere fact of killing does not authorize a recovery. (R. C. 1855, p. 64, § 55.)—*Brown v. Hannibal & St. Joseph R.R. Co.*, 309.

## CORPORATIONS, MUNICIPAL.

1. *Dram-Shop License*.—Towns cannot levy a tax for a dram-shop license larger than that levied for State purposes. (R. C. 1855, p. 686.)—*Town of Paris v. Graham*, 95.
2. *Dram-shop License*.—An ordinance of the town of Paris, under its charter, (Local Acts 1855, p. 174,) establishing a fixed tax of sixty dollars for every dram-shop license, is void.—*Id.*
3. *Power*.—The Legislature had power to authorize the City of Lagrange to expend money upon improvements or roads outside of the limits of the city.—*Skinner's Ex'r v. Hutton et al.*, 244.
4. *Conveyance*.—A municipal corporation having power by its charter to dispose of its lands, its deed therefor will be presumed to have been executed in pursuance of the power, and it is unnecessary for the grantor to show any special authority by resolution or ordinance.—*Chouquette et al. v. Barada et al.*, 249.
5. *Leases—Forfeiture*.—Where the lease, made by a municipal corporation, provided for a forfeiture of the lease on account of non-payment of rent, to be made by order or resolution to be entered on the proceedings of the board of council, and the charter required all resolutions and ordinances to be approved and signed by the mayor before they should take effect, the mere signature to the minutes by the mayor as president of the board is not an approval of the resolution or order forfeiting the lease, and the forfeiture is not well taken.—*Graham v. Carondelet*, 262.
6. *Bonds*.—It will be presumed that the bonds of a municipal corporation, issued in apparent compliance with the law authorizing the issue, have been actually issued in conformity with the law, especially in the hands of *bona fide* holders. The *bona fide* holders will be held to a knowledge of the law authorizing the issue of bonds by the town, but they will not be held, in the absence of actual notice, to inquire into the fulfilment of all the formal prerequisites to the issue. The issuing of the bonds authorizes the receiver or purchaser to suppose all the things required by law to have been done in the time, form and substance required by law.—*Flagg et al. v. City of Palmyra*, 440.
7. *Bonds*.—The act authorizing the issue of bonds by the City of Palmyra, (Acts, 1857, p. 431,) provided that the bonds issued in payment of the subscription to a railroad should be "payable twenty years after date," &c. On the face of the bonds it appeared that the ordinance of the city, directing a subscription to the stock, was passed after the date of the bonds, showing that the bonds had been antedated. Held, to be no substantial objection to the bonds.—*Id.*
8. *Mandamus*.—A mandamus will issue to a municipal corporation, requiring it to levy taxes for the purpose of paying interest upon bonds issued by it in payment of its subscription to the stock of a railroad company.—*Id.*

## COURTS.

See JURISDICTION, 1, 2, 3, 4.

1. *County Court—Record.*—The action of a county court must be shown by its records. Oral testimony is inadmissible to prove the making of a contract with the county to construct or repair a public road, and if the contract be made with an agent or officer of the county, his authority must appear of record.—*Dennison v. County of St. Louis*, 168.

## D

## DAMAGES.

1. *Recoupment.*—The grantee by quit-claim deed, who, at the time of the purchase, had notice of a previous grant to a railroad of a right of way by his grantor, cannot allege that he was defrauded on the ground that the notice was not of a particular kind, as by recital in the deed, or by record.—*Gilmore v. Cook*, 25.
2. *Nutsance—Highway.*—The use by a railroad, under authority of its charter, of a street in its ordinary use as a means of travel and transportation, is not a perversion of the highway from its original purposes. Any damage to the property abutting on the street, resulting from such obstruction, is *damnum absque injuria*.—*Porter v. North Mo. R.R. Co.*, 128.
3. *Mitigation.*—In an action for damage to the property of plaintiff by obstructing the public highway by the construction and use of a railroad, the defendant may show, in mitigation of damages, that the work done by him in grading, &c., enhanced the value of the plaintiff's property.—*Id.*
4. *Rescission.*—When there has been a rescission of a contract for the sale of chattels, the purchaser may sue and recover from the seller the value of what he paid on the contract; but when the contract is still subsisting, the measure of damages is the market value of the chattel at the time and place of delivery.—*White, Ex'r, v. Salisbury*, 150.
5. *Measure.*—The actual annual value of the property detained is the measure of damages in an action of ejectment; and the fact that plaintiffs and defendants are tenants in common makes no exception to the common rule.—*Cutter v. Waddingham et al.*, 299.
6. *Negligence.*—There can be no recovery against a railroad for the killing of cattle unless the negligence of the company be in some way shown. The mere fact of killing does not authorize a recovery. (R. C. 1855, p. 64, § 55.)—*Brown v. Hannibal & St. Joseph R.R. Co.*, 309.
7. *Injunction.*—Upon the dissolution of an injunction enjoining the enforcement of a judgment by execution, it is erroneous in assessing damages to enter judgment for the debt against the principal and securities in the injunction bond. (R. C. 1855, p. 1249, § 13 & 14.)—*Roach v. Burnes*, 319.
8. *Measure.*—When there has been a rescission of a contract for the sale of chattels, the purchaser may sue and recover from the seller the value of what he paid on the contract; but when the contract is still subsisting, the measure of damages is the market value of the chattel at the time and place of delivery.—*White, Ex'r, v. Salisbury*, 150.

## DEPOSITIONS.

1. *Depositions in Perpetuum.*—Parties who appear and cross-examine the wit-

DEPOSITIONS—*Continued.*

- nesses under a commission to perpetuate testimony, will be held to have had actual notice.—*Tayon et al. v. Ladew*, 205.
2. *Practice*.—To authorize the reading of a deposition taken for the reason that the witness was about to leave the State, it must appear by other evidence than that contained in the deposition that the witness is absent from the State at the time of trial. (R. C. 1855, p. 658.)—*Livermore & Cooley v. Eddy's Adm'r*, 547.

## DIVORCE.

1. *Alimony*.—Alimony *pendente lite* can only be allowed to the wife in cases in which she is party plaintiff. (R. C. 1855, p. 662, § 8.) The common law right of the wife is in this respect changed by the statute.—*Morton v. Morton*, 614.

## DOWER.

1. *Mortgage*.—An administrator sold land of his intestate which had been encumbered by a mortgage in which the wife had joined relinquishing dower, and undertook to satisfy the mortgage out of the proceeds of sale. *Held*, that the mortgage was no defence to a suit for dower by the widow against the purchaser.—*Jones v. Bragg*, 337.

## DRAM-SHOPS.

1. *License*.—Towns cannot levy a tax for a dram-shop license larger than that levied for State purposes. (R. C. 1855, p. 686.)—*Town of Paris v. Graham*, 95.
2. *Corporations, municipal*.—An ordinance of the town of Paris, under its charter, (Local Acts, 1855, p. 174,) establishing a fixed tax of sixty dollars for every dram-shop license, is void.—*Id.*
3. *Crimes*.—The twenty-eighth section of the article relating to dram-shops, R. C. 1855, p. 687, applies only to parties having a dram shop license.—*State v. Hambright*, 394.

## DURESS.

1. *Legal Process*.—Threat of legal process is not duress, for the party may plead and make proof and show that he is not liable. Where the collector demanded of the defendants the amount of the license tax due by them as merchants, and threatened that if they refused payment they should be prosecuted by indictment for dealing as merchants without license, and the defendants thereupon paid the sum demanded under protest in writing, the payment was voluntary, and not under duress.—*Clafin v. McDonough*, 412, and *Irving v. St. Louis County*, 575.

## E

## EJECTMENT.

See CONVEYANCE. LANDS. HUSBAND AND WIFE.

1. *Possession*.—Where no legal title to land is shown, the party showing the prior possession will be held to have the better right.—*Schultz v. Arnot et al.*, 172.
2. *Limitations*.—Visible, notorious, continual and actual adverse possession of land for the time limited by the statute, will give title to land to authorize a recovery in ejectment.—*Id.*

EJECTMENT—*Continued.*

3. *Common Field Lots.*—It was unnecessary to the confirmation of a common field lot by virtue of the first section of the act of Congress of June 13, 1812, that the common field should have immediately adjoined the village or its commons.—*Tayon et al. v. Ladew*, 205.
4. *Abandonment.*—To constitute an abandonment under the old Spanish law in Missouri, it must appear affirmatively that the owner quitted the property with the intention of no further claiming it as his own.—*Id.*
5. *Tenants in Common.*—Where the defendant sued in ejectment by a tenant in common sets up an adverse possession, it is unnecessary for the plaintiff to show a demand for possession previous to the suit.—*Harrison v. Taylor et al.*, 211.
6. *Legal Estate.*—In an action of ejectment to recover possession of land by one claiming only an equitable estate, there can be no recovery if the legal estate be outstanding.—*Thompson v. Lyon et al.*, 219.
7. *Estoppel—Vendee.*—A vendee holds adversely to his vendor, and is not estopped from denying his vendor's title.—*Cutter v. Waddingham*, 269.
8. *Evidence—Survey.*—The survey of a tract confirmed is conclusive upon the parties claiming under the confirmation, but the certificate of the surveyor, that the lot surveyed was the lot conceded to the confirmer, is not evidence of such fact, the confirmation not calling for the concession.—*Id.*
9. *Mortgage Contract.*—*Cutter v. Waddingham*, 22 Mo. 206, p. 3, affirmed.—*Id.*
10. *Confirmations.*—A confirmation by the old board of commissioners in 1810 is superior to any title subsequently acquired from the United States.—*Mitchell v. Handfield*, 431.
11. *Confirmation—Relation.*—A confirmation ordered to be surveyed according to the concession, which had been surveyed under the Spanish Government, was a confirmation of a definite tract of land, and the subsequent proceedings by survey and patent relate to the time of the inception of the proceedings before the board of commissioners.—*Id.*
12. *Confirmation—Public Schools.*—A survey and setting apart to the public schools, made in 1845, by virtue of the 2d section of the act of Congress of June 13, 1812, is an inferior title to a confirmation of the board of commissioners in 1810, surveyed and patented in 1852.—*Id.*

## EQUITY.

See FRAUDULENT CONVEYANCES, 1.

1. *Legal Estate.*—In an action of ejectment to recover possession of land by one claiming only an equitable estate, there can be no recovery if the legal estate be outstanding.—*Thompson v. Lyon et al.*, 219.
2. *Forfeiture.*—Where the forfeiture of a lease was a nullity, a bill in equity for relief is properly dismissed.—*Graham v. City of Carondelet*, 262.
3. *Vendors—Purchasers.*—A sold lands to B, and gave bond for conveyance upon final payment of the purchase money. B subsequently sold the land to C, received the price, and gave bond for a conveyance. A afterward conveyed the lands to B, taking back deed of trust of the same date, to secure payments of the purchase money remaining unpaid. In a suit by C against A and B, to vest title, held that C purchased subject to the rights of A, and could not demand a conveyance without payment of the amount due A by

EQUITY—*Continued.*

B, and that the execution of the deeds of A to B and of B to A left the title where it was before, as if the two conveyances had been but one in fact.—Ficklin et al. v. Stephenson, 341.

4. *Mistake*.—Parties must abide the consequences of mistaking the law when they have knowledge of the facts.—McMurray v. St. Louis Oil Manufacturing Co. et al., 377.

## ESTOPPEL.

See LANDLORD AND TENANT.

1. *Title*.—If the tenant be induced, by the false representation of a stranger claiming to be the owner of the demised premises, to attorn to him, the landlord defending with the tenant in ejectment will not be estopped from denying the title of such stranger.—Schultz v. Arnot et al., 172.
2. *Recitals*.—The recitals of a deed estop only parties and privies. The recitals in a deed by which a married woman purports to convey her title to land, do not estop her, nor those claiming under her, from asserting the truth against the recitals.—Hempstead v. Easton, 142.
3. *Mutuality*.—Mutuality is a necessary ingredient of an estoppel. There can be no estoppel upon one party unless the other is equally estopped.—*Id.*
4. *Title*.—A party cannot set up and at the same time deny the title under which he holds as against his adversary having claim under the same title.—Chouquette et al. v. Barada et al., 249.
5. *Vendee*.—A vendee holds adversely to his vendor, and is not estopped from denying his vendor's title.—Cutter v. Waddingham, 269.
6. *Judgment—Former Recovery*.—Where a party has recovered judgment for the amount of a promissory note with the interest thereon, he is barred from again suing upon the same cause of action on the ground that there was a mistake in assessing the proper amount of interest due.—Wickersham v. Whedon et al., 561.
7. *Former judgment*.—If a servant or agent wrongfully dismissed from service elect to sue for the breach, before the termination of the period for which he was hired, and recovers, such recovery will be a bar to any subsequent action upon the same contract.—Booge v. Pacific Railroad, 212.

## EVIDENCE.

1. *Declarations*.—Upon an inquiry into the condition of a testator's mind, his declarations, although made some time prior to the making of his will, are admissible. But on the question of fraud in obtaining the will, they are admissible only when made so near to the time of the execution of the will as to constitute part of the *res gestæ*—Pratte et al. v. Coffman et al., 71.
2. *Deed*.—To make a certified copy of a deed evidence it must appear that the deed was duly recorded in the county in which the land conveyed was situated. (R. C., p. 726, § 17.)—Gwynn et al. v. Frazier, 89.
3. *Slander*.—In an action for slander, it is sufficient if the words proved substantially correspond with those alleged in the declaration. It is not necessary to prove all the words, unless they constitute one entire charge.—Coghill v. Chandler, 115.
4. *Trial*.—Where evidence is offered upon a trial which may or may not be

EVIDENCE—*Continued.*

- competent, depending upon the proof of other facts, such facts should be disclosed to the court, that it may judge of the sufficiency of the evidence. The facts themselves should be stated, and not the conclusions or results from the evidence offered.—Howard v. Coshow, 118.
5. *County Court—Record.*—The action of a county court must be shown by its records. Oral testimony is inadmissible to prove the making of a contract with the county to construct or repair a public road, and if the contract be made with an agent or officer of the county, his authority must appear of record.—Dennison v. St. Louis County, 168.
  6. *Foreign Law.*—The existence of a foreign law is a matter of fact for the jury. If a written law be proved, it is the duty of the court to construe it, and instruct the jury as to its meaning and effect.—Charlotte v. Chouteau, 194.
  7. *Opinion.*—The opinions of witnesses, although experts, are not admissible unless questions of science or skill are involved. In all other cases the facts must be stated for the jury to pass upon their effect.—Rosenheim et al. v. Amer. Ins. Co., 230.
  8. *Estoppel—Vendee.*—A vendee holds adversely to his vendor, and is not estopped from denying his vendor's title.—Cutter v. Waddingham et al., 269.
  9. *Confidential Communication.*—Confidential overtures for pacification, or other propositions between litigating parties, are inadmissible in evidence on grounds of public policy. But an offer to pay a debt in property instead of money is not an offer of compromise.—Ferry v. Taylor, 323.
  10. *Name.*—A name is a means of identity. Process served upon a party by a wrong name is well served.—Parry v. Woodson, 347.
  11. *Hearsay.*—The statements of third persons not made in the presence of the parties to the suit are hearsay and inadmissible.—Coble v. McDaniel, 363.
  12. *Hearsay.*—The statements of one who is a competent witness and who is not a party to the suit are not evidence.—Truesdail v. Sanderson, 532.
  13. *Dying Declarations.*—Whether the declarations made *in extremis* are competent evidence or not, is a question for the court and not the jury.—State v. Burns, 483.
  14. *Slaves—Manumission.*—A deed or act of manumission of a slave may be presumed from such acts of the master as afford a sufficient ground for the presumption.—Lewis et al. v. Hart, Adm'r, 535.
  15. *Declarations.*—In an issue upon a plea of abatement, the statement of the defendant made after his conveyance is competent evidence against himself, but not against his assignee.—Enders et al. v. Richards, 598.
  16. *Admissions.*—The admissions of the defendant, voluntarily made, are competent evidence against him for some purpose, although not directly relative to the crime charged.—State v. Shannon, 596.

## EXECUTIONS.

1. *Levy.*—A levy of an execution upon personal property, if the property be restored to the defendant, is not a satisfaction in law of the judgment.—Thomas' Ex'r v. Cleveland, 126.

## F

## FORCIBLE ENTRY AND DETAINER.

1. *Possession*.—The party in peaceable possession cannot be legally ejected by force. The question of right does not at all arise in the action of forcible entry and detainer, and the defendants cannot set up their right as a defence for their forcible entry.—*Beeler v. Cardwell*, 84.
2. *Parties*.—A party who participates in the forcible entry upon a lot in the peaceable possession of another is guilty at the same moment of the detainer, and if he continue to support and assist the party entering in remaining upon the lot he continues the detainer, and may be properly joined as a defendant in the action for the forcible entry and detainer.—*Blumenthal v. Waugh*, 181.
3. *Judgment*.—Upon an appeal from a justice of the peace in an action of forcible entry and detainer, the appellate court, upon dismissing the appeal, has no jurisdiction to enter judgment for costs against the security in the appeal bond. Such a judgment would be void, and an execution and sale of lands under it would confer no title upon the purchaser.—*Keary v. Baker et al.*, 603.

## FRAUDS.

See ATTACHMENT. PARTITION, 2.

1. *Promise*.—A promise to a debtor to pay his debt to a third person is not a promise to answer for the debt of another within the statute, which applies only to promises made to the creditor.—*Howard v. Coshov*, 118.

## FRAUDULENT CONVEYANCES.

See ATTACHMENTS.

1. *Pleading*.—In an action to charge lands in the hands of a fraudulent grantee, with the payment of a debt due by the equitable owner, it is not necessary that the deeds should be set aside.—*Cheeley's Adm'r v. Wells*, 106.
2. *Attachment*.—In an issue upon a plea in abatement to an attachment, alleging that the defendant had fraudulently conveyed or assigned his effects so as to hinder or delay creditors, the conveyance is fraudulent so as to support the attachment if the defendant made the conveyance with the fraudulent intent, although it may have been valid as to the trustee and the creditor secured.—*Enders et al. v. Richards*, 598.

## H

## HIGHWAY.

1. *Nuisance*.—The use by a railroad, under authority of its charter, of a street in its ordinary use as a means of travel and transportation, is not a perversion of the highway from its original purposes. Any damage to the property abutting on the street, resulting from such obstruction, is *damnum absque injuria*.—*Porter v. N. Mo. R.R.*, 128.
2. *Damage, mitigation*.—In an action for damage to property of plaintiff by obstructing the public highway by the construction and use of a railroad, the defendant may show, in mitigation of damages, that the work done by him in grading, &c., enhanced the value of the plaintiff's property.—*Id.*

## HUSBAND AND WIFE.

See CONVEYANCE. ESTOPPEL.

1. *Separate Property*.—Where husband and wife live together, the possession of the separate property of the wife by the husband will be deemed in law the possession of the wife, who has the title.—*Stewart, to use, &c., v. Ball's Adm'r*, 154.
2. *Marriage Contract*.—*Cutter v. Waddingham*, 22 Mo. 206, p. 3, affirmed.—*Cutter v. Waddingham*, 269.
3. *Agent*.—The wife cannot sell the property of the husband without his authority.—*Brown v. Hannibal & St. Joseph R.R.*, 309.
4. *Estoppel—Femme Covert*.—Prior to the act of June 22, 1841, authorizing married women to convey their estates, to make a valid conveyance of the wife's estate it was necessary that the wife should acknowledge the deed in the manner provided by the statute then in force. (*Lindell v. McNair*, 4 Mo. 380; *Reaume v. Chambers*, 22 Mo. 52.)—*McDowell et al. v. Little et al.*, 523.
5. *Estoppel*.—The recitals of a deed estop only parties and privies. The recitals in a deed by which a married woman purports to convey her title to land, do not estop her, nor those claiming under her, from asserting the truth against the recitals.—*Hempstead v. Easton*, 142.

## I

## INJUNCTION.

1. *Judgment*.—Upon the dissolution of an injunction enjoining the enforcement of a judgment by execution, it is erroneous in assessing damages to enter judgment for the debt against the principal and securities in the injunction bond. (*R. C. 1855*, p. 1249, § 13 & 14.)—*Roach v. Burnes*, 319.

## INSURANCE.

1. *Adjustment*.—In adjusting the loss under a policy of insurance upon a vessel, one-third will be deducted from the cost of repairs in order to determine the amount of the loss.—*Kerr v. Quaker City Ins. Co.*, 158.
2. *Concealment*.—It is the duty of the assured, applying for insurance, to state all the facts known to him material to the risk. Whether the facts known to, but not stated by the assured were material to the risk, is a question of fact for the jury.—*Rosenheim et al. v. America Ins. Co.*, 230.
3. *Seaworthiness*.—The question whether or not a vessel was seaworthy at the time of issuing the policy, is a question of fact to be submitted to the jury; if the facts are admitted or found by the jury, the court will then pass upon it as a question of law.—*Id.*

## J

## JUDGMENT.

See PRACTICE. JURISDICTION.

1. *Breach of Contract*.—If a servant or agent wrongfully dismissed from service elect to sue for the breach, before the termination of the period for which he was hired, and recovers, such recovery will be a bar to any subsequent action upon the same contract.—*Booge v. Pacific R.R.*, 212.

JUDGMENT—*Continued.*

2. *Former Recovery.*—Where a party has recovered judgment for the amount of a promissory note with the interest thereon, he is barred from again suing upon the same cause of action on the ground that there was a mistake in assessing the proper amount of interest due.—*Wickersham v. Whedon*, 561.
3. *Void.*—A judgment recovered without notice is void.—*Roach v. Burnes et al.*, 319.

## JURISDICTION.

1. *St. Louis Criminal Court.*—The St. Louis Criminal Court has jurisdiction to issue *scire facias* and award execution upon a recognizance taken by or returned into said court.—*State v. Woerner*, 216.
2. *Venue.*—A suit for the specific performance of a contract for the sale of real estate must be brought in the county in which the lands are situate. (R. C. 1855, p. 1221, § 3.) The residence of the parties does not confer jurisdiction.—*Ensworth v. Holly et al.*, 370.
3. *Justices' Courts.*—An appeal from a justice of the peace in St. Louis county, in an action for rent, is properly taken to the Law Commissioner's Court. *Adams v. Blecker*, 403.
4. *Parties.*—Where the endorser of a promissory note residing out of the county in which suit was brought was joined as defendant with other parties to the note who were resident, the court did not lose jurisdiction over the non-resident defendant by the dismissal of the suit as to all the resident defendants.—*January v. Rice*, 409.
5. *Admiralty.*—The Federal courts have exclusive jurisdiction in all admiralty and maritime matters.—*Phcgly et al. v. St. Bt. David Tatum*, 461.
6. *Justices' Courts.*—A justice of the peace has jurisdiction to enter judgment on motion upon a forthcoming bond taken in an attachment suit commenced before him, although the penalty exceeds his jurisdiction in a direct suit upon the bond. (R. C. 1855, p. 266, & p. 925-6.)—*McDowell & Co. v. Morgan et al.*, 555.
7. *Law Commissioner.*—The jurisdiction of the Law Commissioner's Court is limited in actions of trespass, and trespass on the case for injuries to personal property, to cases in which the damages claimed do not exceed one hundred dollars. (R. C. 1855, p. 1597.)—*Adams et al. v. Mortland*, 577.

## JURORS.

See PRACTICE, CRIMINAL, 6.

1. *Misconduct.*—Generally, courts will not receive the affidavits of jurors to impeach their verdict or to show misconduct on their part.—*Pratte et al. v. Coffman et al.*, 72.

## JUSTICES' COURTS.

1. *Appeals.*—A motion to dismiss an appeal because the penalty in the bond was too small, is not the same thing as a motion for an additional recognizance. (R. C. 1855, p. 800, § 28.)—*Papin v. Buckingham*, 454.
2. *Jurisdiction.*—An appeal from a justice of the peace in St. Louis county, in an action for rent, is properly taken to the Law Commissioner's Court.—*Adams v. Blecker*, 403.
3. *Jurisdiction.*—A justice of the peace has jurisdiction to enter judgment on motion upon a forthcoming bond taken in an attachment suit commenced

JUSTICES' COURTS—*Continued.*

- before him, although the penalty exceeds his jurisdiction in a direct suit upon the bond. (R. C. 1855, p. 266, & p. 925-6.)—*McDowell & Co. v. Morgan et al.*, 555.
4. *Replevin*.—In an action upon a delivery bond it is immaterial, so far as the liability of the obligors is concerned, at what point of time the property came to the hands of the plaintiff, so that he acquired the possession by means of the suit prior to its final determination.—*Reeves v. Reeves*, 28.
5. *Landlords and Tenants*.—It is not necessary, under the provisions of R. C. 1855, p. 1016, § 33, that the statement should show that the premises sued for are in the ward or township in which suit is brought.—*Walker v. Harper*, 592.

## L

## LANDLORDS AND TENANTS.

1. *Surrender*.—The quitting of the premises occupied by a tenant during the term, and sending the key to the landlord, who proceeds to repair and use the house, does not discharge the tenant from his liability to pay rent, unless the landlord consent to acquit the rent.—*Livermore & Cooley v. Eddy's Adm'r*, 547.
2. *Attornment*.—The attornment of a tenant to a stranger is void, and does not affect the possession of his landlord. (R. C. 1855, p. 1013, § 15.)—*Schultz v. Arnot et al.*, 172.
3. *Assignee*.—The purchaser from the landlord can maintain an action under the statute to recover the possession of the premises from the tenant neglecting to pay rent. (R. C. 1855, p. 1018, § 38, 39.)—*Walker v. Harper*, 592.
4. *Estoppel*.—Tenant cannot dispute his landlord's title.—*Id.*
5. *Justices' Courts*.—It is not necessary, under the provisions of R. C. 1855, p. 1016, § 33, that the statement should show that the premises sued for are in the ward or township in which suit is brought.—*Walker v. Harper*, 592.

## LANDS AND LAND TITLES.

See CONVEYANCES, 4. ESTOPPEL, 2. HUSBAND AND WIFE, 2. LIMITATIONS, 2, 3, 4, 5, 6.

1. *Possession*.—Where no legal title to land is shown, the party showing the prior possession will be held to have the better right.—*Schultz v. Arnot et al.*, 172.
2. *Limitations*.—Visible, notorious, continual and actual adverse possession of land for the time limited by the statute, will give title to land to authorize a recovery in ejectment.—*Id.*
3. *Common Field Lots*.—It was unnecessary to the confirmation of a common field lot by virtue of the first section of the act of Congress of June 13, 1812, that the common field should have immediately adjoined the village or its commons.—*Tayon et al. v. Ladew*, 205.
4. *Abandonment*.—To constitute an abandonment under the old Spanish law in Missouri, it must appear affirmatively that the owner quitted the property with the intention of no further claiming it as his own.—*Id.*
5. *Evidence—Survey*.—The survey of a tract confirmed is conclusive upon the parties claiming under the confirmation, but the certificate of the surveyor

LANDS AND LAND TITLES—*Continued.*

- that the lot surveyed was the lot conceded to the confirmer, is not evidence of such fact, the confirmation not calling for the concession.—*Cutter v. Wad-  
dingham*, 269.
6. *Confirmations*.—A confirmation by the old board of commissioners in 1810 is superior to any title subsequently acquired from the United States.—*Mitchell v. Handfield*, 431.
7. *Confirmation—Relation*.—A confirmation ordered to be surveyed according to the concession, which had been surveyed under the Spanish Government, was a confirmation of a definite tract of land, and the subsequent proceedings by survey and patent relate to the time of the inception of the proceedings before the board of commissioners.—*Id.*
8. *Confirmation—Public Schools*.—A survey and setting apart to the public schools, made in 1845, by virtue of the 2d section of the act of Congress of June 13, 1812, is an inferior title to a confirmation of the board of commissioners in 1810, surveyed and patented in 1852.—*Id.*
9. *Tax Title*.—The revenue act of 1847 requires the collector, after a sale for taxes, to return the certified list furnished by the register, with a note to each tract or lot, showing the disposition made of it; if sold, to whom, and the amount bid, &c. The merely writing a name opposite the tract of land is no compliance with the statute, does not give the information required by the law, nor fulfil its purposes. The deed of the register made upon such memorandum of sale confers no title.—*Donohoe v. Hartless et al.*, 335.
10. *Confirmation*.—A confirmation made by the old board of commissioners, in 1811, to A., or his legal representatives, is a confirmation to A., or to those who prove themselves to hold the title derived from A., and not to the person presenting the claim. (*Hogan v. Page*, 22 Mo. 55, and 32 Mo. 68, affirmed.)—*St. Louis Gas Light Company et al. v. Reiss*, 551.

## LIMITATIONS.

1. *Mechanic's Lien*.—Under the mechanic's lien law, if the several items are furnished under one contract, the contractor may file his lien within ninety days after the date of the last item; but if the materials are furnished under different, distinct contracts, the lien must be filed under each contract within the time limited.—*Livermore v. Wright*, 31.
2. *Adverse Possession*.—To rebut the evidence of adverse possession, the plaintiff was properly permitted to show that the defendant's claim of title under which entry was made was under a tax sale which allowed two years for redemption.—*Pease v. Lawson*, 35.
3. *Adverse Possession*.—A possession, to be of any avail under the statute of limitations, must be adverse to the rightful owner; to be adverse, it must be under a claim of title hostile to the right of the true owner.—*Id.*
4. *Title*.—Visible, notorious, continued and actual adverse possession of land for the time limited by the statute, will give title to land to authorize a recovery in ejectment.—*Schultz v. Arnot et al.*, 172.
5. *Disabilities*.—Where a defendant shows himself to have been in adverse possession of the premises for the time limited by the statute, the burden of proof is upon the plaintiffs to show affirmatively that they were under the disabilities described in the statute. Disabilities cannot be cumulated one upon another.—*Dessaunier v. Murphy*, 184.

LIMITATIONS—*Continued.*

6. *Seizure—Writ.*—A suit is commenced against a boat by filing the petition and taking out process to seize the boat, and the time limited by the statute is to be computed, not from the date of seizing the boat, but of the issuing the writ.—*McDowell et al. v. St. Bt. David Tatum*, 494.
7. *Adverse Possession.*—When the plaintiff shows title to a tract of land which conflicts with the title to a part of the tract claimed by the defendant, to defeat the plaintiff's title by the statute of limitations, it must appear, not only that the defendant had possessed part of the tract described by his deed, but that he actually occupied part of the tract claimed by the plaintiff.—*Tayon et al., v. Ladew*, 205.

## M

## MANDAMUS.

1. *Revenue.*—Under the act of March 15, 1861, (Sess. Acts 1860-61, p. 37, § 7,) the duty of the secretary of State was merely ministerial, to verify the correctness of the account, and a mandamus will lie to compel him to perform the duty. Bay, J., dissenting.—*State, ex rel. Register of Lands, v. Secretary of State*, 293.
2. *Corporations, Municipal.*—A mandamus will issue to a municipal corporation, requiring it to levy taxes for the purpose of paying interest upon bonds issued by it in payment of its subscription to the stock of a railroad company.—*Flagg et al. v. City of Palmyra*, 440.

## MECHANICS' LIENS.

1. *Limitation.*—Under the mechanic's lien law, if the several items are furnished under one contract, the contractor may file his lien within ninety days after the date of the last item; but if the materials are furnished under different, distinct contracts, the lien must be filed under each contract within the time limited.—*Livermore v. Wright*, 31.
2. *Pleading.*—Petition held good on motion to arrest judgment.—*Briggs v. Worrell et al.*, 157.
3. *Pleading.*—In a petition to enforce a mechanic's lien, all the facts necessary for securing the lien must be stated. The petition must show when the account accrued and when the account of the demand was filed. If these facts be not stated, the petition is fatally defective and judgment will be arrested. (Acts, 1856-7, p. 668-9.)—*Heltzell v. Langford*, 396.
4. *Parties.*—In a suit by a material man to enforce a mechanic's lien, the original contractors with the owner are properly made parties defendant although no judgment can be rendered against them. (Acts, 1857, p. 669, § 8.)—*Walkenhorst v. Coste et al.*, 401.
5. *Judgment.*—In a suit to enforce a mechanic's lien it is erroneous to enter judgment for the debt against the owner and other defendants not parties to the contract with the plaintiff.—*Id.*
6. *Notice.*—The sub-contractor must give the owner of the building ten days' notice of his claim before filing his lien. Notice served on the 1st of September, when the lien was filed on the 10th, was not sufficient. (Acts, 1857, p. 679, § 18.)—*Schubert v. Crowley*, 564.

**MECHANICS' LIENS—Continued.**

7. *Jurisdiction*.—The St. Louis Circuit Court and Court of Common Pleas have concurrent jurisdiction with the St. Louis Land Court in suits to enforce mechanics' liens. (Acts, 1858-9, p. 457.)—Fitzgerald v. Jones et al., 587.

**MERCHANTS.**

1. *License*.—A merchant, under the statute, is a person who deals in the selling of goods, wares and merchandise, at any store, stand, or place occupied for that purpose. It is immaterial if the defendant, by his labor, changed the form of the goods sold; if he deal in the selling of the goods at a store, he is a merchant for the purposes of the act, and must procure a license for that purpose. (Acts, 1859, p. 53.)—State v. Whittaker, 457.

**MORTGAGE.**

1. *Payment*.—The payment or satisfaction of the mortgage debt avoids the mortgage deed, and the right of the mortgagor to the land is legal, not equitable. The failure to enter satisfaction upon the margin of the record may subject the mortgagee to penalties, but has no effect to keep the mortgage in existence.—McNair et al. v. Picotte et al., 57.
2. *Administrator*.—An administrator sold land of his intestate which had been encumbered by a mortgage in which the wife had joined relinquishing dower, and undertook to satisfy the mortgage out of the proceeds of sale. *Held*, that the mortgage was no defence to a suit for dower by the widow against the purchaser.—Jones v. Bragg, 337.

**N****NUISANCES.**

See HIGHWAY.

**O****OFFICERS.**

See PRACTICE, CIVIL. PARTITION, 2.

1. *Return*.—The return of an officer as to the execution of a process delivered to him cannot be questioned collaterally, but is conclusive upon the parties to the suit.—Reeves et al. v. Reeves et al., 28.

**P****PARTITION.**

1. *Warranty*.—There is an implied warranty between coparceners as to the property allotted in partition; but, *held*, that in this case there had been no partition, and that the lots had not been held in coparcenary. (S. C., Farrar v. Christy's Adm'r, 24 Mo. 453, Pt. 3, affirmed.)—Farrar et al. v. Christy's Adm'r, 44.
2. *Sales*.—In partition sales the sheriff is the agent of the vendor with powers defined and limited by law. He has power to make a contract of sale, but none to abrogate it. When the contract is made, the beneficial interest vests in the vendor, of which the sheriff has no power to divest him without his consent.—Stewart, to use, v. Garvin, 103.

## PARTNERSHIP.

1. *Accounts*.—While the accounts of the partnership remain unadjusted, one partner cannot recover of the other any money received on partnership account.—*Smith v. Smith*, 557.
2. *Rights*.—Each partner has full power and authority to sell, pledge or otherwise dispose of the entirety of any particular effects belonging to the partnership, and not merely of his own share thereof, for any purpose within the scope of the partnership, and may relinquish the rights of the firm secured by any joint contract, but he cannot affect the rights of his co-partner in any several contract.—*Clark v. Rives et al.*, 579.

## PAYMENT.

1. *Banks—Coin—Tender*.—The banks incorporated by the law of this State have the right to consider each bank bill as a separate and distinct demand, and to tender in payment thereof five dollars in the silver coin of the United States, struck under the act of Congress of February 21, 1853, and the balance of each note in gold coin. Such tender avoids the penalty of twenty per cent. interest imposed by the law of this State incorporating the banks. (Acts, 1857, p. 17, § 9, & p. 23, § 44.) *Bates, J.*, dissenting.—*Boatman's Savings Institution v. Bank of Missouri*, 497.
2. *Duress—Legal Process*.—Threat of legal process is not duress, for the party may plead and make proof and show that he is not liable. Where the collector demanded of the defendants the amount of the license tax due by them as merchants, and threatened that if they refused payment they should be prosecuted by indictment for dealing as merchants without license, and the defendants thereupon paid the sum demanded under protest in writing, the payment was voluntary, and not under duress.—*Claffin v. McDonough*, 412.
3. *Accord and Satisfaction*.—The giving of a promissory note is not a payment, unless it be so agreed between the parties.—*Howard et al. v. Jones et al.*, 583.

## PRINCIPAL AND AGENT.

1. *Wife*.—The wife cannot sell the property of the husband without his authority.—*Brown v. Hannibal & St. Joseph R.R.*, 309.
2. *Bill of Exchange*.—An agent who draws a bill of exchange upon his principal in settlement of a debt due by the principal to the payee, does not thereby make himself liable to the payee as drawer of the bill upon protest for non-payment. If the bill had been negotiated he might have been bound to an innocent holder.—*McAllister v. Budd et al.*, 417.
3. *Authority*.—If a party, whose name is forged to a note by a person not his agent in any way, ratifies or adopts the act for the purpose of shielding the forger from the consequences of the crime, he does not thereby make himself liable, as principal, for the acts of an agent. (See *Christian University v. Jordan*, 523.)—*Ferry v. Taylor*, 323.

## PROPERTY.

1. *Animals*.—The increase of domestic animals belongs to the owner of the female, except where the dam is hired for a limited period, when the increase belongs to the usufructuary.—*Stewart, Sheriff, &c., v. Ball's Adm'r.*, 154.

## PRACTICE, CIVIL.

1. *Process*.—The return of an officer as to the execution of a process delivered

PRACTICE, CIVIL—*Continued.*

- to him cannot be questioned collaterally, but is conclusive upon the parties to the suit.—*Reeves et al. v. Reeves et al.*, 28.
2. *Service of Process—Non-Residents.*—Where it is intended to serve a party with process, in accordance with the provisions of R. C. 1855, p. 1225, § 18, it must appear affirmatively from the affidavit that the copy of the petition and notice of the suit were served upon the party at some place without this State, and within the United States.—*Fisher et al. v. Fredericks et al.*, 612.
3. *Jurisdiction.*—Where the endorser of a promissory note residing out of the county in which suit was brought was joined as defendant with other parties to the note who were resident, the court did not lose jurisdiction over the non-resident defendant by the dismissal of the suit as to all the resident defendants.—*January et al. v. Rice et al.*, 409.
4. *Offer of Compromise.*—Confidential overtures for pacification, or other propositions between litigating parties, are inadmissible in evidence on grounds of public policy. But an offer to pay a debt in property instead of money is not an offer of compromise.—*Ferry v. Taylor*, 323.

## PLEADINGS.

5. *Answer.*—The answer of the defendant must not only deny all information as to the allegation of the petition, but also all knowledge thereof, and the averment of one without the other is insufficient to controvert a material allegation.—*Revely v. Skinner et al.*, 98.
6. *Infants.*—As against infants defending by a guardian *ad litem*, all the allegations of the petition must be proved.—*Id.*
7. *Infants.*—Infants answering by guardian *ad litem* may deny generally the allegations of the petition.—*Id.*
8. *Answer.*—An amended answer must set forth all the matters of defence. Upon the filing of the amended answer the original is abandoned. (R. C. 1855, p. 1255, § 13 & 14.)—*Woolfolk's Adm'r v. Woolfolk*, 110.
9. *Answer—Default.*—It is erroneous to take a judgment by default, when an answer is on file, whether verified by affidavit or not; after the answer has been stricken out, a default may be taken.—*Ruch v. Jones et al.*, 393.
10. *Answer.*—The answer must directly traverse or confess and avoid the allegations of the petition.—*Mechanics' Bank v. Klein et al.*, 559.
11. *Pleading.*—A party cannot traverse and at the same time confess and avoid the same cause of action.—*Coble v. McDaniel*, 363.
12. *Multifariousness.*—A petition which prayed judgment to establish a debt against an intestate's estate, and to charge lands for which the intestate had paid the consideration, but for the purpose of defrauding creditors had taken the title in the name of a defendant, who had conveyed with notice to another defendant, held multifarious.—*Cheely's Adm'r v. Wells*, 106.
13. *Demurrer.*—Judgment upon demurrer sustained for wrong reasons assigned, reversed although petition otherwise defective.—*Id.*
14. *Uniting Actions.*—A plaintiff may unite in the same petition several causes of action when they arise out of the same transaction or transactions connected with the same subject of action. (R. C. 1855, p. 1228.)—*Callaghan v. McMahan*, 111.
15. *Amendment.*—An amended petition must set out all the facts sufficient to constitute a cause of action.—*Skinner's Ex'r v. Hutton et al.*, 244.

PRACTICE, CIVIL—*Continued.*

16. *Affidavit—Answer.*—The answer of several co-defendants answering jointly is sufficiently verified by the affidavit of one of them. (R. C. 1855, p. 1254, § 20.)—*Ruch v. Jones*, 393.
17. *Mechanic's Lien.*—In a petition to enforce a mechanic's lien, all the facts necessary for securing the lien must be stated. The petition must show when the account accrued and when the account of the demand was filed. If these facts be not stated, the petition is fatally defective and judgment will be arrested. (Acts, 1856-7, p. 668-9.)—*Heltzell v. Langford*, 396.
18. *Mechanic's Lien—Parties.*—In a suit by a material man to enforce a mechanic's lien, the original contractors with the owner are properly made parties defendant, although no judgment can be rendered against them. (Acts, 1857, p. 669, § 8.)—*Walkenhorst v. Coste et al.*, 401.
19. *Filing Instruments.*—The statute (R. C. 1855, p. 1241, § 60) only requires instruments executed by the opposite party to be filed.—*Campbell et al. v. Wolff et al.*, 459.
20. *Mechanics' Lien.*—Petition held good on motion to arrest judgment.—*Briggs v. Worrell et al.*, 157.

## TRIALS AND THEIR INCIDENTS.

21. *Continuance.*—After the continuance of the cause for the term, the parties are still presumed to continue in court for action upon collateral matters and motions.—*Papin v. Buckingham et al.*, 454.
22. *Trials.*—Such proceedings as tend to deprive parties of full and fair trials of their causes should not be favored; but the courts should promote all fair means of trying causes on their merits.—*Id.*
23. *Trial.*—Where the jury are to pass upon the existence of a foreign law, it is proper to read to them from printed books of decisions and history, as evidence of what the law was.—*Charlotte v. Chouteau*, 194.
24. *Evidence.*—Exceptions to the admission of evidence must be taken at the trial when the evidence is offered, otherwise they will be considered as waived.—*Shaler v. Van Wormer*, 386.
25. *Affirmative of Issues.*—*Farrell v. Brennan*, 32 Mo., 383, affirmed.—*Lucas v. Sullivan*, 389.
26. *Trial.*—The granting permission to a plaintiff to reply to a counter-claim at the trial is a matter within the discretion of the court below, and the Supreme Court will not interfere with this discretion unless the defendant has sustained substantial wrong thereby.—*Hale et al. v. Skinner et al.*, 452.
27. *Exceptions.*—The record must show the reasons of objections to evidence, and also the evidence upon which instructions are predicated.—*Bussemeyer v. Stuckenberg*, 546.
28. *Objections.*—Where objections are made at the trial to the admission of evidence, the reasons for the objection must be stated.—*Rosenheim et al. v. America Insurance Co.*, 230.
29. *Instructions.*—Instructions not supported by the evidence are properly refused.—*Goodall v. Trickey*, 340.
30. *Evidence.*—Instructions which there is no evidence to support are properly refused.—*Gelpke v. Pike*, 168.
31. *Instruction.*—An instruction, "that under the evidence, in this case, the

PRACTICE, CIVIL—*Continued.*

- jury should find for the defendant," held improper, as the court thereby usurped the whole province of the jury.—*Chambers v. McGiverson*, 202.
32. *Instructions*.—Instructions asked at the trial must not require the court to assert as fact what it is the province of the jury to determine.—*Farrar et al. v. David*, 482.
33. *Instructions*.—Instructions given must be applicable to the case made by the evidence.—*McCamant v. Busch*, 544.
34. *Exceptions*.—Exceptions to the action of the court must be taken at the trial.—*Connolly v. Pendergast*, 577.
35. *Nonsuit*.—It is only proper to take a nonsuit where, at the trial, the action of the court is such as to preclude the plaintiff from a recovery. In no other case will the Supreme Court interfere.—*Hageman v. Moreland*, 86.
36. *Nonsuit*.—It is only proper to take a nonsuit where, at the trial, the action of the court is such as to preclude the plaintiff from a recovery. In no other case will the Supreme Court interfere.—*Layton et al. v. Riney et al.*, 87.
37. *Nonsuit*.—Where the plaintiff takes a nonsuit voluntarily, without being forced thereto, the Supreme Court will not review the action of the court below.—*Corby's Adm'r, v. Taylor*, 374.
38. *Exceptions*.—Exceptions to the action of the inferior court, in giving or refusing instructions, must be taken at the time of trial, and not by motion for new trial.—*Calvert v. City of Alexandria*, 149.
39. *Motions*.—A motion to set aside judgment must be made part of the record by bill of exceptions, or the action of the court thereupon cannot be reviewed.—*Chouteau et al. v. Nuckols et al.*, 148.
40. *New Trial*.—To warrant the setting aside a verdict upon the ground of newly discovered evidence, it must not only appear that the evidence is new, material and applicable to the issue, but that it is not cumulative, and could not have been obtained upon the former trial with reasonable diligence. (See S. C. 28 Mo. 397.)—*Goff v. Mulholland*, 203.
41. *Finding—Review*.—Where a party asks for a review of the finding made by the court upon a question of fact, in a suit commenced under the Practice Act of 1849, he must make a case setting forth the evidence.—*Thompson & Wife v. Lyon*, 219.
42. *New Trial*.—The party, by failing to file his motion for a new trial, does not waive the exceptions taken and preserved at the trial.—*Gray v. Heslep*, 238.

## JUDGMENTS.

43. *Judgment—Corporation*.—A judgment confessed by the president of a corporation without service of process, and without the order or knowledge of the directors or company, and not setting forth the cause of the indebtedness, is void.—*McMurray v. St. Louis Oil Manufacturing Company*, 377.
44. *Judgment*.—In a suit to enforce a mechanic's lien it is erroneous to enter judgment for the debt against the owner and other defendants not parties to the contract with the plaintiff.—*Walkenhorst v. Coste et al.*, 401.
45. *Jurisdiction*.—Where the defendant is brought in by publication and fails to appear, an interlocutory judgment should be entered, which should be made final at the succeeding term. Where the defendant fails to appear, the court has no authority to try the case upon its merits.—*Lombard v. Clark*, 308.

PRACTICE, CIVIL—*Continued.*

46. *Default—Final Judgment.*—In actions not founded on bonds, bills, or notes, for the direct payment of money, it is error to take a final judgment at the same term with the default, whether that be the return term or not. (*Doane v. Holly*, 25 Mo. 187, qualified; R. C. 1855, p. 1280, § 9, 10, 11.)—*Hopkins v. McGee*, 312.
47. *Judgment—Demand not due.*—It is error to enter judgment in an attachment suit for a demand not then due. (R. C. 1855, p. 239, § 2.)—*Hamilton v. McClelland*, 315.

## AMENDMENTS. See PLEADING.

48. *Amendment—Jeofails.*—If a matter material to the plaintiff's cause of action be not expressly averred in the petition, but be necessarily implied from what is expressly stated therein, the defect will be cured by verdict.—*Shaler v. Van Wormer*, 386.
49. *Variance.*—The writing the initials of the middle name "Mc" instead of "M." is no variance.—*Campbell et al. v. Wolf et al.*, 459.
50. *Amendments.*—The transcript of a judgment entered *nunc pro tunc*, referred to the judgment as entered Feb. 15, when the true date was Feb. 17; held to be a clerical error, which will be disregarded.—*Id.*
51. *Amendment.*—The statute (R. C. 1855, p. 1255, § 14) permits amendments by the striking out of a word.—*Id.*
52. *Amendment.*—It was proper for the court, after the evidence was closed, to permit the plaintiff to correct the description of the land in the petition, to make the petition conform to the facts proved. (R. C. 1855, p. 1253, § 2 & 3.)—*Callaghan v. McMahan*, 111.
53. *Amendment—Misnomer.*—The plaintiff may amend his petition by correcting a mistake in the name of the defendant. (R. C. 1855, § 3, p. 1253; s. d. 10, of § 19, p. 1256; § 20, p. 1257.) Such amendment is no cause for setting aside a judgment by default.—*Parry v. Woodson*, 347.
54. *Amendment.*—The amendment of the petition at the trial, by striking out the name of one plaintiff and substituting another, is within the discretion of the court.—*Tayon et al. v. Ladew*, 205. [See No. 26.]

## SUPREME COURT.

55. *Costs.*—Appellant required to pay costs in appellate court, although successful, on account of the trifling amount for which the appeal was taken.—*Heyneman v. Garneau*, 565.
56. *Review.*—Under the practice act of 1849, where the judgment is entered upon a finding of the court, the party excepting must make his application for a review of any question of law or fact as provided by sec. 3, art. 15, of said act.—*Hobein v. Murphy*, 43.
57. *Exceptions.*—Objections to the action of a *nisi prius* court must be stated in the bill of exceptions.—*Smith v. Phillips*, 43.
58. *Appeal.*—No final judgment.—*Young, Adm'r, v. Stonebreaker et al.*, 117.
59. *Appeal.*—An appeal taken at the September term, 1859, from a judgment rendered at the September term, 1856, is not taken in time.—*Chouteau et al. v. Nuckols et al.*, 148.
60. *Transcript.*—Judgment affirmed, transcript not showing the papers by which the suit was begun.—*Suddarth v. Cox's Adm'r*, 149.

PRACTICE, CIVIL—*Continued.*

61. *Appeals—Briefs.*—If the appellant fail to file the statement and points, as required by the statute, the appeal will be dismissed. (R. C. 1855, p. 1300, § 32.)—*Dean v. Ewing*, 172.
62. *Supreme Court.*—The Supreme Court will not try questions of fact, nor weigh the evidence by which such questions are solved.—*Papin v. Allen*, 260.
63. *Nonsuit.*—Where the plaintiff takes a nonsuit voluntarily, without being forced thereto, the Supreme Court will not review the action of the court below.—*Rainey et al. v. Edmonson*, 375.
64. *Final Judgment.*—The granting of a new trial is not a final judgment, and no appeal lies from it.—*Byers v. Butterfield*, 376.
65. *Judgment.*—Judgment affirmed with damages, no exceptions having been taken to the action of the court below.—*Whittelsey v. Sullivan et al.*, 405.
66. *Motion.*—The motion for judgment, notwithstanding the answer, is no part of the record unless made so by the bill of exceptions.—*Mechanics' Bank v. Klein et al.*, 559.
67. *Verdict.*—Verdict set aside, there being no evidence to support it.—*Heyneman v. Garneau*, 565.

## PRACTICE, CRIMINAL.

1. *Grand Jury.*—A challenge to a grand juror or to the array must be made before the jurors are sworn, and can only be made for the causes stated in the statute. (R. C. 1167, § 2.)—*State v. Welch*, 33.
2. *Indictment—Gaming.*—An indictment for permitting a gambling device to be used for the purpose of gaming in the house of the defendant, need not aver the actual using of the device by persons engaged in playing for money or property.—*State v. Seaggs*, 92.
3. *Demurrer.*—That a plea in abatement is not sworn to is no cause of demurrer.—*State v. Welch*, 33.
4. *Scire facias—Parties.*—Execution may be awarded against one party to a recognizance although the other be not summoned.—*State v. Woerner*, 216.
5. *Appeal—Final judgment.*—The judgment upon a *scire facias* upon a recognizance awarding execution is a final judgment from which an appeal lies.—*Id.*
6. *Jury.*—The rule in capital cases forbidding the jury to separate, applies only to the jury when duly empanelled, sworn and charged with the case.—*State v. Burns*, 483.

## R

## RECOUPMENT.

See DAMAGES.

## REVENUE.

1. *Tax Title.*—The revenue act of 1847 requires the collector, after a sale for taxes, to return the certified list furnished by the register, with a note to each tract or lot, showing the disposition made of it; if sold, to whom, and the amount bid, &c. The merely writing a name opposite the tract of land is no compliance with the statute, does not give the information required by the law, nor fulfil its purposes. The deed of the register made upon such memorandum of sale confers no title.—*Donohoe et al. v. Hartless et al.*, 335.

REVENUE—*Continued.*

2. *Merchant*.—A merchant, under the statute, is a person who deals in the selling of goods, wares and merchandise, at any store, stand, or place occupied for that purpose. It is immaterial if the defendant, by his labor, changed the form of the goods sold; if he deal in the selling of the goods at a store, he is a merchant for the purposes of the act, and must procure a license for that purpose. (Acts, 1859, p. 53.)—*State v. Whittaker*, 457.
3. *Tax-Sale*.—*Ruby v. Huntsman*, 32 Mo. 501, affirmed.—*McNair & Wife v. Jenson*, 312.
4. *Dram-Shop License*.—Towns cannot levy a tax for a dram-shop license larger than that levied for State purposes. (R. C. 1855, p. 686.)—*Town of Paris v. Graham*, 94.

## S

## SALES.

1. *Sheriff-Agent*.—In partition sales the sheriff is the agent of the vendor with powers defined and limited by law. He has power to make a contract of sale, but none to abrogate it. When the contract is made, the beneficial interest vests in the vendor, of which the sheriff has no power to divest him without his consent.—*Stewart, to use, v. Garvin*, 103.
2. *Stocks*.—Stocks are not like goods or articles of personal property, of variable quality; and the sale of one parcel by a bailee will answer the purpose of crediting the bailor with the proceeds of stock pledged, as well as the sale of the specific shares.—*Berlin v. Eddy et al.*, 426.
3. *Stock*.—A contract to sell and deliver shares of stock in an incorporated company is satisfied by transferring to the party the title to the stock upon the books of the company.—*White, Ex'r, v. Salisbury*, 150.
4. *Vendee*.—If a vendee of goods unreasonably refuse to accept them, the vendor is under no obligation to allow them to perish on his hands, or to become reduced in value; but he may sell them at auction and hold the buyer responsible for the difference between the price they actually bring and the price agreed to be paid.—*Van Horn v. Rucker*, 391.
5. *Title-Delivery*.—A sale of goods is not complete to vest in the vendee an immediate right to the property so long as anything remains to be done by the vendor. Where it was agreed that the goods should be delivered upon such boats as the purchaser might name, and the seller did so deliver the goods and notified the purchaser thereof, the delivery was complete, the title passed to the purchaser, and he became liable for the price.—*Hening et al. v. Powell et al.*, 468.

## SECURITIES.

See BILLS OF EXCHANGE AND NOTES NEGOTIABLE. BONDS AND NOTES ASSIGNABLE.

1. *Principal and Surety*.—Where the creditor obtained from the principal debtor a security, which he discharged upon receiving from the debtor one more valuable, which could not have been reached at law, the surety is not thereby released.—*Thomas' Ex'r v. Cleveland*, 126.
2. *Notice*.—Where the surety, in the manner prescribed by the statute, notified the creditor to sue the principal debtor, the disturbed condition of the coun-

SECURITIES—*Continued.*

try held to be no excuse for not commencing suit within thirty days, it appearing that the courts were open for the bringing of suits. (R. C. 1855, p. 1454, § 1, 2, 3.)—Cockrill v. Dye et al., 365.

## SLANDER.

1. *Evidence.*—In an action for slander, it is sufficient if the words proved substantially correspond with those alleged in the declaration. It is not necessary to prove all the words, unless they constitute one entire charge.—Coghill v. Chandler, 115.

## SLAVES.

1. *Manumission.*—A deed or act of manumission of a slave may be presumed from such acts of the master as afford a sufficient ground for the presumption.—Lewis et al. v. Hart, Adm'r, 535.

## STATUTES.

- Attachment.*—R. C. 1855, p. 266, § 12—McDowell et al. v. Morgan, 555, p. 257, § 64; Hamilton v. McClelland, 315; p. 239, § 1—Enders et al. v. Richards, 598.
- Administration.*—R. C. 1855, p. 151, § 1, 2—Farrar et al. v. Christy et al., 44.
- Banks.*—Acts, 1857, p. 22, § 38—Merchants' Bank et al. v. Sassee et al., 350; Bank of the State of Missouri v. Smith et al., 364; p. 17, § 9, p. 23, § 44—Boatman's Savings Institution v. Bank of Missouri, 497.
- Banking, Illegal.*—R. C. 1855, p. 286, § 4 & 9—North Missouri Railroad v. Winkler, 354; Christian University v. Jordan, 528.
- Bills of Exchange.*—R. C. 1855, p. 295, § 15 & 16—Unsold v. Stephenson, 161.
- Boats and Vessels.*—R. C. 1855, § 1—Phegley v. St. Bt. David Tatum, 461; p. 313, § 42—McDowell et al. v. St. Bt. David Tatum, 494.
- Bonds, Notes and Accounts.*—R. C. 1855, p. 320, § 2 & 3—Weinwick v. Bender, 80; Macy v. Kendall, 164.
- Conveyances.*—Act, July 7, 1807, and Jan. 21, 1815—McDowell et al. v. Little et al., 523; R. C. 1855, p. 726, § 17—Gwynn v. Frazier, 89; Charter of Carondelet, Acts, 1851, p. 146, § 11—Graham v. Carondelet, 262.
- Corporations.*—R. C. 1855, p. 385, § 2—McMurray v. St. Louis Oil Manufacturing Company et al., 377.
- Damages.*—R. C. 1855, p. 649, § 5—Brown v. Hannibal and St. Joseph Railroad, 309.
- Depositions.*—R. C. 1855, p. 658—Livermore et al. v. Eddy's Adm'r, 547.
- Divorce and Alimony.*—R. C. 1855, p. 662, § 8—Morton v. Morton, 614.
- Dram-shops.*—R. C. 1855, p. 686, § 24—Town of Paris v. Graham, 95; p. 687, § 28—State v. Hambright, 394.
- Forcible Entry and Detainer.*—R. C. 1855, § 1 & 2—Beeler v. Cardwell, 84; Blumenthal v. Waugh, 181; p. 797, § 15, 16, 18, & p. 800, § 31—Keary v. Baker et al., 603.
- Frauds.*—R. C. 1855, p. 807, § 5—Howard v. Coshow, 118; Stewart, to use, &c., v. Garvin, 103.
- Law Commissioner.*—R. C. 1855, p. 1596, § 3—Adams v. Blecker, 403; p. 1597, § 2—Adams v. Mortland, 577.
- Justices' Courts.*—R. C. 1855, p. 800, § 28—Papin v. Buckingham et al., 454.

## STATUTES—Continued.

- Landlords and Tenants*.—R. C. 1013, § 15—Schultz v. Arnot et al., 172 ; p. 1018, § 38, 39, & p. 1016, § 33—Walker v. Harper, 592.
- Limitations*.—R. C. 1855, p. 1045, § 1, 2—Pease v. Lawson, 35 ; Schultz v. Arnot et al., 172 ; Tayon v. Ladew, 205 ; p. 1046, § 6—Dessaunier et al. v. Murphy, 184.
- Mechanics' Liens*.—R. C. 1855, p. 1064, § 1, 6, 20—Livermore v. Wright, 31 ; p. 1069, § 12, and Acts, 1856-7, p. 668-9—Heltzell v. Langford et al., 396 ; Acts, 1856-7, p. 669, § 8—Walkenhorst v. Coste, 401 ; p. 679, § 18—Schubert v. Crowley, 564.
- Merchants*.—Acts, 1859, p. 53—State v. Whittaker, 457.
- Mortgage*.—R. C. 1855, p. 1087—McNair et al. v. Picotte et al., 57.
- Partition*.—R. C. 1855, p. 1116, § 32—Stewart, to use, &c., v. Garvin, 103.
- Practice*.—R. C. 1855, p. 1225, § 18—Fisher et al. v. Fredericks et al., 612 ; p. 1218, § 6—January et al. v. Rice et al., 409. Art. II.—Revely v. Skinner, 98. Art. IV., p. 1221, § 3—Ensworth v. Holly et al., 370. Art. V.—Reeves et al. v. Reeves et al., 28 ; § 18—Fisher et al. v. Fredericks et al., 612. Art. VI., § 1—Callaghan v. McMahan, 111 ; § 2—Skinner's Ex'r v. Hutton, 244 ; § 12, &c., Woolfolk's Adm'r v. Woolfolk, 110 ; Ruch v. Jones, 393 ; Coble v. McDaniel, 363 ; Cheeley's Adm'r v. Wells, 106 ; Mechanics' Bank v. Klein et al., 539 ; Revely v. Skinner et al., 98 ; p. 1241, § 60—Campbell et al. v. Wolff et al., 459. Art. VIII., p. 1249, § 18—Roach et al. v. Burnes, 319. Art. X., § 5, 10—Papin v. Buckingham et al., 454 ; § 27, &c.—Shaler v. Van Wormer ; Bussemeyer v. Stuckenberg, 545 ; Conolly v. Pendergast, 577 ; Calvert v. City of Alexandria, 149 ; § 47—Goodall v. Trickey, 340 ; Gelpke v. Pike, 168 ; Chambers v. McGiveron et al., 202 ; Farrar v. David, 482 ; McCamant v. Busch, 544 ; § 48—Hageman v. Moreland, 86 ; Layton v. Riney et al., 87 ; Corby's Adm'r v. Taylor, 374. Act, 1849, Art. XVI., § 3—Thompson et al. v. Lyons et al., 219 ; Chouteau v. Nuckols, 148 ; Hobein v. Murphy, 43. Art. XII., § 4—Ruch v. Jones et al., 393 ; § 9, 10, 11—Hopkins v. McGee, 312 ; Walkenhorst v. Coste et al., 401 ; § 21-23—McMurray v. St. Louis Oil Manufacturing Co., 377. Art. XIII., § 3—Gray v. Heslep, 238 ; Goff v. Mulholland, 203 ; Ryers v. Butterfield, 376. Art. XIV., § 32—Dean v. Ewing, 192 ; § 33—Smith v. Phillips, 43 ; § 36—Whittelsey v. Sullivan et al., 405.
- Practice, Criminal*.—R. C. 1855, p. 1167, § 2 ; State v. Welch, 33 ; p. 1589, § 1, 2, 3, & 12—State v. Woerner, 216.
- Revenue*.—Acts, 1847, § 11—Donohoe v. Hartless et al., 335.
- Securities*.—R. C. 1855, p. 1454, § 1, 2, 3—Cockerill v. Dye et al., 365.
- St. Louis Criminal Court*.—R. C. 1589—State v. Woerner, 216.
- St. Louis Land, Circuit and Common Pleas Courts*.—Acts, 1858-9, p. 457—Fitzgerald v. Jones, 587.
- Time*.—R. C. 1855, p. 1027, § 22—State, *ex rel.* v. Gasconade Co. Court, 102.
- Venue*.—R. C. 1855, p. 1559, § 1—Charlotte v. Chouteau, 144.
- Witnesses*.—R. C. 1855, § 3—Pratte et al. v. Coffman et al., 71 ; § 6—Alexander v. Shortridge, 349.

## STRAYS.

See TRESPASS.

## T

## TIME.

1. *Computation*.—In the computation of time, where the computation is to be made from an act done, the day when such act was done is included; but it will be excluded whenever such exclusion will avoid a forfeiture. (R. C. 1855, p. 1027, § 22, s. d. 4.)—*State, ex rel. Reitemeyer, v. Gasconade County Court*, 102.

## TRESPASS.

1. *Strays*.—The owner of land, in driving out an animal that has strayed into his field, must do it with such reasonable care as to avoid doing unnecessary injury, or he will be liable to the owner of the stray for the damages sustained.—*Totten v. Cole*, 138.

## U

## USES AND TRUSTS.

See WILLS. CONVEYANCES.

1. *Legal Estate*.—In an action of ejectment to recover possession of land by one claiming only an equitable estate, there can be no recovery if the legal estate be outstanding.—*Thompson v. Lyon et al.*, 219.

## V

## VENDORS AND PURCHASERS.

1. *Title—Conveyance*.—A. sold lands to B., and gave bond for conveyance upon final payment of the purchase money. B. subsequently sold the land to C., received the price, and gave bond for a conveyance. A. afterward conveyed the lands to B., taking back deed of trust of the same date, to secure payments of the purchase money remaining unpaid. In a suit by C. against A. and B., to vest title, *held* that C. purchased subject to the rights of A., and could not demand a conveyance without payment of the amount due A. by B., and that the execution of the deeds of A. to B. and of B. to A. left the title where it was before, as if the two conveyances had been but one in fact.—*Ficklin et al. v. Stephenson*, 341.

## VENUE.

1. *Change*.—It is not sufficient, to authorize a change of venue, that the community are prejudiced against the cause of the applicant; the prejudice must be against him.—*Charlotte v. Chouteau*, 194.

## W

## WILLS.

1. *Devise—Trust*.—A testator by his will, 1, bequeathed to his daughter A. a slave at a fixed valuation; 2, declared that his children should take equal shares in the whole of his estate, the special legacies to them to be taken at the valuations affixed as part of the estate; 3, that the portion of his estate which should fall to his daughter A. should be placed in the hands of H. for her special use and benefit, he consenting to act as guardian. A.

WILLS—*Continued.*

subsequently married, and the testator, by a codicil to his will, directed that the portion of the estate devised to A., if she died before her husband, should be equally divided between her sisters and brother; that the slave should be sold and the proceeds placed in the hands of H. for the benefit of A., and that A. should receive the interest of her portion of the estate, to be paid to her annually by the said H., or his legal representatives. *Held*, that, to effectuate the intention of the testator, it was necessary that H. should be clothed with the legal title, and that he took A.'s share as her trustee. (See *Beaupied v. Jennings*, 28 Mo. 254.)—*Hall v. Howdeshell et al.*, 475.

## WITNESSES.

1. *Adverse Party*.—The party called as a witness for his adversary must not only be adverse upon the record but adverse also in interest. Evidence may be given to show the nature and character of his interest, without examining him upon his *voir dire*.—*Pratte et al. v. Coffman et al.*, 71.
2. *Party*.—A defendant in the record is not disqualified as a witness for his co-defendant by that fact alone; he is competent to testify as to some matters. When the witness is sworn, objections may be taken to so much of the testimony as may be inadmissible. (*Kleinman v. Boernstein*, 32 Mo. 311, affirmed.)—*Alexander v. Shortridge*, 349.



## ERRATA.

Page 309, for p. 64, read p. 649; for § 55, read § 5.

“ 523, head note, for 1831, read 1821.

“ 632, Husband and Wife, No. 4, for 1841, read 1821.

